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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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BY Sara Pascoe ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2017-032082

13 **Bach K. Nguyen, M.D.**
14 **41680 Ivy Street, Suite A**
15 **Murrieta, CA 92562**

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. A 92027,**

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about July 1, 2005, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 92027 to Bach Kim Nguyen, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on November 30, 2020, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the board deems proper.

6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 "(b) Gross negligence.

4 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from
6 the applicable standard of care shall constitute repeated negligent acts.

7 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
8 for that negligent diagnosis of the patient shall constitute a single negligent act.

9 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 "(d) Incompetence.

15 "(e) The commission of any act involving dishonesty or corruption that is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

17 "(f) Any action or conduct which would have warranted the denial of a certificate.

18 "(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of
21 the proposed registration program described in Section 2052.5.

22 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board."

25 7. Section 2241 of the Code states:

26 "(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs,
27 including prescription controlled substances, to an addict under his or her treatment for a purpose
28 other than maintenance on, or detoxification from, prescription drugs or controlled substances.

1 "(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or
2 prescription controlled substances to an addict for purposes of maintenance on, or detoxification
3 from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections
4 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this
5 subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer
6 dangerous drugs or controlled substances to a person he or she knows or reasonably believes is
7 using or will use the drugs or substances for a nonmedical purpose.

8 "(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also
9 be administered or applied by a physician and surgeon, or by a registered nurse acting under his
10 or her instruction and supervision, under the following circumstances:

11 "(1) Emergency treatment of a patient whose addiction is complicated by the presence of
12 incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

13 "(2) Treatment of addicts in state-licensed institutions where the patient is kept under
14 restraint and control, or in city or county jails or state prisons.

15 "(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety
16 Code.

17 "(d)(1) For purposes of this section and Section 2241.5, "addict" means a person whose
18 actions are characterized by craving in combination with one or more of the following:

19 "(A) Impaired control over drug use.

20 "(B) Compulsive use.

21 "(C) Continued use despite harm.

22 "(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due
23 to the inadequate control of pain is not an addict within the meaning of this section or Section
24 2241.5."

25 8. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
26 adequate and accurate records relating to the provision of services to their patients constitutes
27 unprofessional conduct."

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 9. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
4 the Code for the commission of acts or omissions involving gross negligence in the care and
5 treatment of Patient 1.¹ The circumstances are as follows:

6 Patient 1

7 10. Patient 1 was a fifty-nine year old female who treated with Respondent beginning
8 about 2010 through October 2013.² Patient 1 was also being treated by multiple other medical
9 professionals, and was taking various other medications during this time period.³ Per the autopsy
10 report, Patient 1 died on December 13, 2013, from acute Fentanyl and Diphenhydramine
11 intoxication as a consequence of prescription drug abuse. The autopsy further revealed that
12 Patient 1 had swallowed a Fentanyl patch which was found in her esophagus. Toxicology results
13 confirmed the presence of Fentanyl, Lorazepam, Diphenhydramine, and Amphetamines, which
14 are all controlled substances subject to abuse.

15 11. Review of the medical records indicate that Respondent was apparently treating
16 Patient 1 for various maladies, including chronic fibromyalgia, chronic low back pain, shoulder
17 pain, depression, anxiety disorder with bipolar characteristics, chronic fatigue syndrome,
18 migraines, and hypertension. Per CURES, Respondent prescribed to Patient 1 various
19 medications to treat said maladies, including controlled medications such as Fentanyl patches,
20 Hydrocodone, and Lorazepam. During the time period Respondent was treating Patient 1, there
21 were many warning signs that Patient 1 may have been suffering from opioid abuse/dependency.⁴

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23 ¹ The patient is identified by number to protect her privacy.

24 ² These are approximate dates based on the records which were available for review.

25 ³ The CURES report indicates that Patient 1 was also being prescribed numerous
26 prescriptions for controlled substances from other physicians, some of which overlapped the
27 timeframe Respondent was treating Patient 1. Patient 1's husband and son also indicated that
28 Patient 1 had addiction/abuse issues, and the records indicate that Patient 1's husband had even
written to Respondent on at least one occasion, regarding concerns he [the husband] had about
Patient 1's use of her prescribed medications.

⁴ Respondent asserts that he had tried numerous non-opiate therapies with Patient 1, but
due to refractory symptoms, Respondent decided to treat Patient 1's fibromyalgia pain with opiate
medications. Respondent also asserts that Patient 1 had been counseled on appropriate use of
opiates, but that she never signed an opiate use agreement.

12. For example, on or about May 31, 2011, Anthem Blue Cross Insurance Company wrote to Respondent alerting him that Patient 1 had been filling a large number of controlled substances prescriptions by multiple providers within the past 90 days. However, Respondent stated to Board staff that he was first notified that Patient 1 was being prescribed Lorcet (Hydrocodone) from another physician during his June 24, 2011 visit with Patient 1, and that he [Respondent] had failed to calculate that Patient 1 was consuming over eight grams of Acetaminophen daily.

13. Respondent also recorded several visits after May 2011 that Patient 1 had reported that her pain medications had been stolen, and that she had requested early refills. Respondent also recorded aberrant behavior displayed by Patient 1, on several visits after May 2011, which Respondent should have recognized as signs that Patient 1 was suffering from opioid abuse/dependency. Despite these "red flags" or warning signs, Respondent failed to refer Patient 1 to a specialist, and continued to prescribe opiates to Patient 1.

14. These acts or omissions in the treatment of Patient 1, as described above, represent an extreme departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

15. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that she committed repeated negligent acts in his care of Patient 1 above. The circumstances are as follows:

16. The facts and circumstances in paragraphs 10 through 14, above, are incorporated by reference as if set forth in full herein.

THIRD CAUSE FOR DISCIPLINE

(Inadequate Records)

17. By reason of the facts and allegations set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under section 2266 of the Code, in that Respondent failed to maintain adequate and accurate records of his care and treatment of Patient 1.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Prescribing to an Addict)**

3 18. Respondent is subject to disciplinary action under section 2241 of the Code in that
4 Respondent prescribed controlled substances to Patient 1, who had signs of addiction.

5 19. The facts and circumstances as alleged in the First Cause for Discipline are
6 incorporated by reference as if set forth in full herein.

7 **DISCIPLINE CONSIDERATIONS**

8 20. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges that effective May 30, 2018 (the "2018" Decision), in a prior disciplinary
10 action entitled *In the Matter of the Accusation Against Bach Kim Nguyen, M.D.*, case no. 800-
11 2014-007285, before the Medical Board of California, Respondent's license was placed on three
12 years probation, with terms and conditions. The 2018 Decision is now final and is incorporated
13 by reference as if fully set forth.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Medical Board of California issue a decision:

- 17 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 92027,
18 issued to Bach K. Nguyen, M.D.;
- 19 2. Revoking, suspending or denying approval of Bach K. Nguyen, M.D.'s authority to
20 supervise physician assistants and advanced practice nurses;
- 21 3. Ordering Bach K. Nguyen, M.D., if placed on probation, to pay the Board the costs of
22 probation monitoring; and
- 23 4. Taking such other and further action as deemed necessary and proper.

24
25 DATED: August 1, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant